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Protection of Human Life in Its Early Stage

Intellectual Foundations and Legal Means



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Eugenics as a Human Right

*José Miguel Serrano Ruiz-Calderón**

The European Court of Human Rights (ECHR) was established as the main instrument for the implementation of the Convention intended to protect human rights. This Court has spoken out against Italy with a very brief statement of grounds at the request of two residents in this State: Rosetta Costa and M. Walter Pavan.¹ Both were carriers of a genetic disease and both wanted access to medically assisted procreation in order to prevent the transmission of a genetic disease by preimplantation embryo selection.

The Italian Law 40, known as the *Assisted Reproduction Law*, prohibits eugenic practices, in particular embryo selection. The European Court of Human Rights noticed a contradiction between the Law 40 and Law 194 which allows so-called “therapeutic abortion”. In fact the couple had previously agreed to abortion based on this legislative justification. They did so after the fetus was found to be affected with a disease through prenatal diagnosis, being currently the most widespread instrument to prevent birth,² as the killing of a child with a disability discovered in the prenatal stage of its development is often euphemistically called.

The Court based its judgment on the contradiction found in the Italian legislation. This contradiction was a violation of Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, which states that everyone has the right to the protection of his/her privacy and family life. It seems that in principle this article has nothing to do strictly with the application of limits on embryo selection in IVF, and in fact the Court had ruled so, considering that the prohibition of heterologous fertilization called by Austria did not limit personal or family life. Indeed at that time the Grand Chamber still accepted that the interference of Article 8 does not refer exclusively to a negative duty of the State but also implies a positive duty to promote that life, insisting that the Court’s aim

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1 *Costa et Pavan c. Italie*, 28.08.2012 (Requête n° 54270/10).

2 N.López Moratalla, M. Lago Fernández Purón, E. Santiago, *Selección de embriones humanos. Diagnóstico Genético Preimplantación comparado*, Cuadernos de Bioética, vol. XXII, Nr 75/2011.

is not to replace the State's margin of appreciation when legislating on assisted fertilization.³

As to the scope of the margin of appreciation which belongs to states in matters concerning medically assisted procreation, in *S.H. et autres c. Autriche* the Grand Chamber made a very important and particularly relevant statement. Unfortunately, it was ignored by the Second Section in *Costa and Pavan v. Italy*. The Grand Chamber of the ECHR emphasized the complexity of proper assessment of the breadth of the margin of appreciation to be enjoyed by the State when deciding any case under Article 8 of the Convention. As pointed out in that case, "there is no consensus within the Member States of the Council of Europe, either as to the relative importance of the interest at stake or as to the best means of protecting it, particularly where the case raises sensitive moral or ethical issues, the margin will be wider, as the State authorities are, in principle, in a better position than the international judge to give an opinion, not only on the 'exact content of the requirements of morals' in their country, but also on the necessity of a restriction intended to meet them. A wide margin of appreciation will also be accorded if striking a balance between competing private and public interests or Convention rights is in question." Then the Court observed that according to a comparative survey available to the Court, in the field of assisted procreation a large variety of legal solutions might be observed and for that reason, the State's margin of appreciation is not to be narrowed.⁴

Unfortunately, this statement by the Grand Chamber was totally disregarded by the Second Section in *Costa and Pavan*, where a totally opposite approach seems to have been taken. It narrowed this margin of appreciation very much in relation to PID and to some extent it also limited the margin in relation to IVF legislation.⁵ The hypothesis that we hold in this paper is that this second judgment is

3 *S.H. et autres c. Autriche* [GC], n° 57813/00, § 82.

4 *S.H. et autres c. Autriche* [GC], n° 57813/00, § 94-96.

5 "As it was pointed out by the European Center for Law and Justice: L'article 8 a essentiellement pour objet de protéger les individus contre les ingérences arbitraires des autorités publiques. La Cour l'a rappelé dans l'arrêt du 1er avril 2010, en précisant que « la notion de « vie privée » au sens de l'article 8 de la Convention est une notion large qui englobe, entre autres, . . . le droit au respect des décisions de devenir ou de ne pas devenir parent . . . Le droit au respect crée, pour l'Etat, une obligation de s'abstenir d'intervenir dans la décision du couple. L'Etat ne doit pas forcer la volonté des parents, par exemple en faisant procéder à des contraceptions, stérilisations ou avortements forcés, ou en imposant des charges fiscales dissuasives à chaque nouvelle naissance comme c'est le cas en Chine." Observations en Tierce Intervention soumises à la Grande Chambre de la Cour européenne des Droits de l'homme dans l'affaire *S.H. et autres c. Autriche* (Requête n° 57813/00).

to some extent a kind of reconstruction of the American decision in *Roe v. Wade*⁶ and that the Court unlawfully imposed eugenic practice⁷ at the European level on the grounds of respect for personal and family life – a right which is construed in a similar way to the U.S. right to privacy.⁸

Eugenics and human rights

Originally eugenics was a discipline strongly dependent on Social Darwinism. It appeared in this sense in the work of Francis Galton. The objective was to keep the struggle for survival in human society, to preserve the advantages of natural selection thanks to new, artificial means in modern societies regardless of the serious limitation of this struggle.⁹ Effectively it was nothing more but the old prejudices on responsibility for the poor, disguised by a so-called scientific hypothesis.¹⁰

The concern of eugenics has always been to improve mankind through the application of science. This is true both of its negative aspects (selection by elimination of the defective) as well as in its positive ones (selection of the fittest for reproduction, or when this was made possible, of those who were believed to have positive features).

The methods of eugenics in the first instance focused on the denial of reproductive capacity to those who were not able to fulfill the social standards as understood by the promoters of eugenics. This limitation was racially motivated or based on pseudoscientific observations, such as the belief that a person inherits certain moral properties of. Even very respectable courts which created especially relevant jurisprudence for the protection of individual and social rights, such as the U.S. Supreme Court, pronounced in an openly eugenic way. Particularly noteworthy in this respect is the famous judgment delivered by a judge as eminent as Oliver Wendell Holmes, who delivered the famous statement in the *Buck v. Bell* case: “It is better for the whole world, if instead of waiting to execute degenerate offspring for crime, or to let them starve for their imbecility, society can pre-

6 US Supreme Court 410 U.S. 113 *Roe v. Wade* appeal from the united states district court for the northern district of Texas No. 70-18 Argued: December 13, 1971 Decided: January 22, 1973.

7 In Spain see: E. Rodríguez Martín, *Eugenics’ extension in the Spanish health care system through the prenatal diagnosis*, Cuadernos de Bioética” XXIII, 2012/1^a p 53; also: J. Villarraig Martín, *The silent disappearance: report of screening eugenics of people with down syndrome*, Cuadernos de Bioética XXIII, 2012/1^a , p 111.

8 J. Finnis, *The value of human life and the right to die: some reflections on Cruzan and Ronald Dworkin*, Southern Illinois Law Journal, Vol. 17, num III, ULJCM 1992-1993.

9 J. M. Serrano, *Retos jurídicos de la bioética*, Madrid 2005.

10 Fr. Galton, *Herencia y Eugenesia*, Madrid 1988.

vent those who are manifestly unfit from continuing their kind. The principle that sustains compulsory vaccination is broad enough to cover cutting the Fallopian tubes. (*Jacobson v. Massachusetts*, 197 U.S. 11, 25 S. Ct. 358, 3 Ann. Cas. 765). Three generations of imbeciles are enough.”¹¹

In immigration countries eugenists were also concerned with the selection of immigrants for alleged eugenic reasons.¹² This happened in the United States as well, as is known in the overtly racist immigration laws. Thus the legislation signed by President Coolidge,¹³ including the *National Origins Act*, and the *Asian Exclusion Act*,¹⁴ was a United States federal law that limited the annual quota of immigrants who could be admitted from any country to 2% of the number of people from that country who were already living in the United States in 1890; and it was diminished from the earlier 3% set up by the *Immigration Restriction Act* of 1921. These regulations completely banned Asian immigration.

However, abortion was the field where eugenics was probably most openly based on social prejudice. Here, the hypothesis followed a Malthusian-tailored principle, which considered that higher reproductive propensity from lower classes was negatively affecting genetic heritage.¹⁵ The promotion of abortion among women of this social class was therefore a core eugenics objective. This resulted in efforts undertaken by eugenists to legalize abortion, as Anne Farmer has demonstrated in her invaluable book.¹⁶ Interestingly, in countries where racial prejudice rather than social prejudice was the predominant discrimination, abortion was less accessible or not available at all to the racially “healthy” population of whatever social status, but encouraged in ethnic groups labeled as “sick,” “lower” or “parasites”, to follow some of the terminology of that time.¹⁷

This brief introduction is intended to recall that eugenics is the foundation of some of the biggest attacks on human rights, attacks which were to be countered by the creation of the Council of Europe and its system of guarantees, with the European Convention in the first place resulting in the establishment of the European Court of Human Rights.

11 *Buck v. Bell*, 274 U.S. 200 (1927) at 208.

12 M. Grant, *The passing of the great race or The racial basis of the European history*, Ayer 1970.

13 The Immigration Act of 1924 (The Johnson-Reed Act).

14 Pub.L. 68-139, 43 Stat. 153, enacted May 26, 1924.

15 A. Pichot, *La Société pure. De Darwin à Hitler*, Paris, 2001.

16 See: A. Farmer, *By their fruits: eugenics, population control, and the abortion campaign*, sine loco 2008.

17 See: J.M. Serrano, *El aborto, de la mano de la eugenesia. La investigación histórica de Ann Farmer muestra que en su origen el aborto y la esterilización se promovieron como medidas eugenésicas contra los pobres*, http://eprints.ucm.es/11744/1/El_aborto_by_their_fruits_arreglado.pdf.

It is in this context that we must analyze the alleged scandal that the ECtHR found Italy liable for: the breach of the ECHR by having limited the most aggressive eugenic practice, namely preimplantation genetic diagnosis (PGD) for in vitro fertilization, by its Law 40.

A serious contradiction within common European legal culture

This paradox is particularly acute, as the majority of European states belonging both to the European Union and to the Council of Europe were exposed in the same year to an instance of embryo protective jurisprudence in the famous sentence *Brüstle v. Greenpeace* delivered by the Grand Chamber of the Court of Justice of the EU, and on the other hand, to the *Costa-Pavan Judgment v. Italy* by the European Court of Human Rights, which established a *de facto* compulsory eugenic “option” in assisted reproduction laws.

It is worth recalling the most important data on embryo valuation in the European Union case law.

On 18 October 2011 the Court of Justice of the European Union delivered an important interpretation of Directive 98/44 EC on the legal protection of biotechnological inventions. It was the preliminary judgment in the *Brüstle v. Greenpeace* case, referred to the CJEU by the German Supreme Administration Court for the determination of the scope of patentability exclusion for the human body, as provided by Directive 98/44 EC. The court decided that this exclusion covers all the stages of human development including germinal cells, and that the identification of just one of its elements or one of its products, including the sequence or partial sequence of a human gene, excluded a “product” from patentability. For this purpose the Court determined the concept of the “non-patentable embryo,” common to all European countries. This is a broad concept of the embryo, that only for that purpose, differs from the prevailing interpretation in the British or Spanish legislation, and comes closer to the current concept in German law.¹⁸

The reasons to support the developing embryo by means of protective legislation are evident to many scholars.¹⁹ This legislation is being implemented progressively at the European level, but there are some contradictions to be resolved if we want to promote embryo protection. Recently Justo Aznar, a Spanish bioethicist,

18 For detailed analysis of the issue see: *Id.*, *Dignidad versus patentabilidad (Comentario de la STJ 18 de octubre de 2011 en el asunto Brüstle/ Greenpeace)*, La Ley. Revista jurídica española de doctrina, jurisprudencia y bibliografía, N° 7766, Sección Tribuna, 30 Dic. 2011, Año XXXII. pp. 4-7.

19 See: M. Livio, *Estatuto ético del embrión humano: estatuto biológico, antropológico y jurídico*, Madrid, 1999.

has stressed the relationship between the biological and legal status of the human embryo. The foundation of its human rights must be built upon its biological reality. The claim that we have to justify is that the early embryo is a living human being belonging to our species, a human individual, and not a lump of cells without a biological structure.²⁰

The most important argument is the embryo's genetic identity. The genome of the zygote already contains all the genetic information necessary for that new being to develop fully into a living adult being. As Justo Aznar states, the genetic identity of the new individual and its membership of a particular species has already been determined in the process of conception. The evolution of that being is a continuous biological process resulting in the different realities of its development in the course of its life, identifying it as a living human being, from the fertilisation of the egg by the sperm until its natural death. However, there are many more biological arguments to support the argument that a human individual is something more than just its genetic code. We now have much more information about the non-genetic mechanisms that significantly influence embryo development. Every phenotype expression of a living being is the result of the gene content of its genome and the epigenetic information that is generated throughout its evolution, as a fundamental consequence of the interaction of the genome with its environment. If those scientific data are not acknowledged in a clear way, then any vagueness will lead to a vague approach taken in the construction of the general legal principles as well as in the ethical guidelines relating to the human embryo. "It is not possible to build a well-founded bioethics if it is not consolidated with a good foundation in biology based on verified data and the careful examination of the information and ideas which must be considered to resolve these problems."²¹

There are further biological mechanisms which support the position that the early human embryo cannot be considered merely as a lump of cells, but as an organised living human being. These include mechanisms that regulate the emission of the embryo's development program; the so-called position information; the role played by the fusion of the cell membranes of both gametes in starting up the process of the embryo's development, and the determination of the asymmetry and polarity of the zygote; various biochemical factors, mainly the intra- and extracellular calcium levels, which can directly influence embryo development; the genetic regulation of the cell differentiation mechanisms; the biochemical dialogue established between the embryo and its mother during its existence in the Fallopian tube; and finally the inhibition of the mother's immune response.

20 In extenso: *Estatuto Biológico del embrión. Desarrollo embrionario. Ataques a la vida humana naciente*, Informe del Observatorio de Bioética de la UCAV, <http://observatorio-bioetica.com/embriones-humanos/estatuto-biologico-desarrollo-embrionario/>.

21 G. Herranz, *El embrión ficticio. Historia de un mito biológico*, Madrid: Palabra 2013, p 9.

Implantation diagnosis, prenatal diagnosis and eugenic abortion

The eugenic route in assisted reproduction laws first appear to be associated with preimplantation diagnosis (PID), then with prenatal diagnosis (PSC) and finally manifested in so-called eugenic abortion. It might be worth highlighting some aspects of eugenic abortion that could be useful in the analysis of the Costa and Pavan case.

In the German, and, to some extent, also in the Spanish jurisprudence, the aim of the selection of a healthy child and the subsequent destruction of those who are defective, is concealed under a doctrine tolerating *prima facie* criminal conduct in order to defend another legally protected value. According to this approach, it is burdensome to impose a penalty on a person beset by problems revealed in prenatal diagnosis. No penalty, but also, no right to abortion. Still it seems that the right to abortion is denied in theory rather than in practice. This was of particular concern to the German Federal Constitutional Court: what Germany wanted was a eugenic policy. In other words, the eugenics-based exception to general protection of the unborn child was explained as being not so much the right to have a perfect child but rather the benefit of granting no penalty for an act which is basically not accepted by the law.²²

The context of the debate on the legal status of the embryo

Another issue that may not be disregarded in an analysis of the legislation for the protection of prenatal life is the inconsistency with which such a law might be affected. Indeed, if courts ignore the complex reality and the very architecture of the legal protection of life at the prenatal stage of development the law might appear to be tainted with several inconsistencies, manifested in many unexpected situations.²³ This problem is much more important and even more relevant when these international courts are strictly bound by an international treaty, so that the effectiveness of their decisions requires mediation with a Party-State by the Committee of Ministers.

22 For a broader context see: J.M. Serrano Ruiz-Calderón, *Política de Estado ante el final de la vida. La transformación de la deontología médica*, Cuadernos de Bioética XXIII (77) 2012, pp. 125-135. See also I. Kershaw, *Hitler 1936-1945*, t II, Barcelona 2000, p. 264.

23 “However, western legal systems have traditionally understood that whereas objects can be traded freely, persons, including the human body, its organs and most essential functions, cannot be the object of commerce. This means that the freedom of the individual to make contracts for mutual benefit is limited.” J. López Guzmán, A. Aparisi Miralles, *An approach to the legal and ethical problem of surrogate motherhood*, Cuadernos de Bioética XXIII, 2012/2^a, p. 253.

Indeed various controversial situations might be considered regarding the legal status of the embryo.

The first consideration is the penalty for abortion as a controversial issue in itself. If abortion is not to be penalized, it must be taken into consideration as a potential “solution” every time the so-called “indications” occur, or whenever there are other circumstances difficult for the mother to handle. Consequently, in many countries, including Spain, those “indications” seriously jeopardize the value of unborn life.²⁴ Sometimes a decision is taken to suspend the protection of a unborn child for a specified period of time. Such an apparent lack of any protection is considered justified only in the context of abortion. It does not mean that the embryo becomes totally unprotected: it is unprotected only against aggressive action by his mother, which is considered justified for a number of reasons.

Another controversial situation arises from the truly sadistic absolute availability of abortion, established *de facto* in *Roe v. Wade*, with nuances which indeed could be interpreted as a total loss of the child’s individual rights in the prenatal phase versus the absolute will of his or her mother not to have a child, or, in a different context, to have children only under certain conditions, or to have a child with specific properties.²⁵

The European Court of Human Rights. Costa and Pavan v. Italy

In the *Costa and Pavan v. Italy* case (application no. 54270/10), the European Court of Human Rights held, unanimously, that there had been a violation of Article 8 (the right to respect for private and family life) of the European Convention on Human Rights. The case concerned an Italian couple who are healthy carriers of *cystic fibrosis* and with the help of medically-assisted procreation by means of preimplantation diagnosis (PID), wanted to avoid transmitting the disease to their offspring. Italian law prohibits PID. However, it allows IVF for sterile couples or those in which the man has a sexually transmissible disease such as HIV or hepatitis B and C, to avoid the risk of transmitting the infection. The Court noted this inconsistency in Italian law that denied the couple access to embryo screening but authorised medically-assisted termination of pregnancy if the foetus showed symptoms of the same disease. The Court considered that the applicants’ desire

24 J.M. Serrano Ruiz-Calderón, *Aspectos jurídicos y morales de la despenalización del aborto cuando se trata de previsibles anormalidades del feto*, Revista General de Legislación y Jurisprudencia, Tomo LXXXVIII de al segunda época, Febrero 1984, pp 181-226.

25 About contradiction of this form of abortion and medical awareness see: E. D. Pellegrino, *The Physician’s Conscience, Conscience Clauses, and Religious Belief: A Catholic Perspective*, Fordham Urban Law Journal, vol. 30 Issue 1/2002, pp.221, 231.

to resort to medically-assisted procreation and PID in order to have a baby that would not suffer from *cystic fibrosis* was a form of expression of their private and family life that fell within the scope of Article 8. The fact that the law did not allow them to proceed in this manner therefore amounted to an interference with their right to respect for their private and family life which was “in accordance with the law” and pursued the legitimate aims of protecting morals and the rights and freedoms of others, nevertheless it was disproportionate, and thus in breach of Article 8.

Preimplantation diagnosis

One of the fundamental aspects of this judgment is recognition of implantation diagnosis as a feature of the right to respect for personal and family life, which amounts to claim positive obligations of the State, as to provision of access to assisted reproductive techniques.

Thanks to research by Natalia Lopez Moratalla and her team, medical information is available which allows for the assessment of preimplantary diagnosis (PID) in its true scientific context and the understanding of the rationale for legislation which, even if eugenic abortion is admitted (as in Italy), still does not permit PID, and is associated with assisted reproductive techniques alternative to *in vitro* fertilization (IVF). As Natalia Lopez Moratalla points out, assisted human reproduction techniques associated with procedures for the detection of chromosomal or genetic defects in embryos *in vitro* prior to implantation are often claimed to have a beneficial potential. First of all, they are presented as an alternative to eugenic abortion, secondly as enabling older women to procreate or allowing them to avoid pregnancy with chromosomally defective embryos.

On the other hand, genetic diagnosis before implantation (PGD) and the screening of embryos *in vitro* (PSC), conjures up an image of the disabled person as a social outcast. Moreover, it assumes a right to conduct direct human experimentation without therapeutic purposes and enables the manipulation of the embryo that is chosen or discarded according to diagnosis created primarily for the advancement of perinatal medicine. Since it deals with numerous embryos, it also permits “positive eugenics” that seek to select embryos according to a third-party preference as to the sex, or lack of certain genetic irregularities. She considers PID an overt form of eugenics sanctioning the destruction of human life in its early stages and failing to satisfy the minimum methodological requirements for scientific research or biotechnology.

There have been no previous animal tests to validate the techniques in question and this omission is giving rise to serious diagnosis errors. PID ignores evi-

dence that some discarded embryos can eliminate their detected defects just two days after the biopsy. Moreover, the study about what may or may not be diagnosed is only retrospective. Last but not least is the fact that there is no certainty on the effects that an embryo biopsy may cause to diagnosed embryos, *i.e.* PID gives no warranty that embryos will develop in the correct way after being transferred to the uterus.²⁶

Contentious elements of the judgment. Hyperactivity of the court

As Bernard Nathanson once said,²⁷ the U.S. Supreme Court's activism has led to a major conflict involving constitutional aspects, by curtailing the legislative power in criminal matters and by developing an extremely wide concept of privacy that includes sexuality (at least that is my interpretation subject to discussion), which must therefore be treated as a priority over the right to life, at least in the pre-natal phase of life. Its ruling on the *Roe v. Wade* case, confirmed in many of its subsequent verdicts, has effectively straitjacketed the US legislative power, by declaring "privacy" a constitutional right²⁸, thereby denying American pro-lifers the political instruments to argue their case and preventing Congress from passing legislation to abolish abortion (despite sporadic attempts to circumvent the Supreme Court ruling).²⁹

In the *Costa and Pavan* case the ECHR has followed a similar course. Once again "privacy" has been invoked to construct a previously non-existent right. Moreover, the ECHR has ignored the Convention which served as the grounds for its own creation, and it has blocked further public discussion like the debate on the issue that took place in the Italian parliament in its preparatory work on Law 40.

No one knows who authorized the ECHR in its provisional decision to skip all the complex debate on Law 40, playing with creative jurisprudence, and solving the political controversy in a sense, on the strength of their own convictions, using some dubious arguments, but paying no attention to the scientific side of issue under consideration.

But, as rightly pointed out by some of the intervenient parties, what is even more controversial is that the ECHR disregarded Article 35 § 1 of the Convention

26 N. López Moratalla, M. Lago Fernandez Purón, E. Santiago, *op.cit.*, pp. 243-258.

27 B. Nathanson, *Hand of God: A Journey from Death to Life by The Abortion Doctor Who Changed His Mind*, Regnery Publishing inc.: Washington DC 2001, p. 177-178.

28 Cf., J. Finnis, *The Priority of Persons, Intention and Identity*, in: *Id.*, *Collected Essays*, vol. II, Oxford 2011, p. 27.

29 C. D. Forsythe, S. B. Presser, *The Tragic Failure of Roe v Wade. Why Abortion Should Be Returned to the States*, *Texas Review Law & Politics*, vol. 10 Issue (1 Fall 2005), pp 85-170.

providing that “referral to the Court in a given situation may only occur after all domestic remedies have been exhausted according to the generally recognised rules of international law . . .” The complaining party did not exhaust all the legal means available at the national level and this clearly reveals an unprecedented degree of judicial activism in this case. The European Court of Human Rights argued that continuing with domestic remedies certainly would give no effect and this belief on the Court’s part appeared to be a sufficient ground for it to disregard Article 35 § 1 of the Convention and its earlier case law.

The European Centre for Law and Justice stated in its submissions: “The applicant neither can claim to have been affected in any Convention right nor have they initiated any action against the Italian judicial authorities: They just claim they wanted to have a child after a PID and this wish was denied by the Italian State. It certainly seems that the protection system of the European Court of Human Rights concerning national rights as subsidiary versus the national states is abandoned.”³⁰

On the other hand, according to the Court the alleged inconsistency between the two Italian rulings – one allowing eugenic abortion and the other prohibiting the eugenic selection of embryos, results in disproportionate suffering and thus justifies “intrusion” by the Court.

As Frank Cranmer has noted: “The Court considered that the applicants’ desire to use medically-assisted procreation to have a healthy baby was a form of expression of their private and family life that fell within the scope of Article 8. The fact that the domestic law did not allow them to do so was an interference with their rights under Article 8 which was certainly ‘in accordance with the law’ and pursued the legitimate aims of protecting morals and the rights and freedoms of others.”³¹

Conclusion

As I have pointed out, the U.S. Supreme Court’s activism in *Roe v. Wade* has led to a significant reduction of the power of democratic legislatures in criminal matters, preventing them from providing protection for human life at the prenatal

30 ECLJ, Observations en tierce intervention soumises à la deuxième section de la Cour européenne des droits de l’homme dans l’affaire Rosetta Costa et Walter Pavan contre l’Italie (Requête n 5470/10). <http://eclj.org/pdf/observations-eclj-mpv-cedh-costa-et-pavan-c-italie.pdf>

31 F. Cranmer, *Genetic disorders, embryo screening, private and family life and Article 8*. <http://www.lawandreligionuk.com/2012/09/01/genetic-disorders-embryo-screening-private-and-family-life-and-article-8/>.

stage. The effect of *Costa & Pavan v. Italy* is similar. It also uses the concept of privacy in order to create a right which is very controversial and has never existed before. In effect, it might be argued, that at least some forms of eugenics, have been recognized in Europe as human rights protected by the system of the European Convention on Human Rights.

The book consists of thirteen studies examining different aspects of human life protection in the early stage of its development. The contributions are arranged in three parts. Part I focuses on theoretical problems and examines the main issues of contemporary jurisprudence. The foundation of human rights, different approaches to sovereignty, the relation between law and science, the legitimacy of judicial power, and the nature of legal authority are discussed. Part II presents the issues within the national contexts of the USA, Germany, Austria and Poland. In a wider perspective, Part III examines the issue of the protection of human life in the prenatal phase on three different levels: within the EU, within the European Court of Human Rights case law and the UN system.

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